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RE: Barrett v. City of Rochester, et al., 17-CV-6160 (DGL)

AL

Ash, Spencer L. <Spencer.Ash@CityofRochester.Gov>

Wed 4/19, 3:41 PM

Elliot Shields 



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Inbox

[Appreciate it.](#)

From: Elliot Shields [mailto:eshields@rothandrothlaw.com]
Sent: Wednesday, April 19, 2017 3:31 PM
To: Ash, Spencer L. <Spencer.Ash@CityofRochester.Gov>
Subject: RE: Barrett v. City of Rochester, et al., 17-CV-6160 (DGL)

I don't have your motion in front of me at the moment, but one example is that I know you didn't move on the Denial of Fair Trial Claim. Also, there are two Monell claims, counts 13 and 14, and you didn't address either of them specifically by number, but it was clearly addressed to the 13th Cause of Action.

Elliot Shields, Esq.
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From: Ash, Spencer L. [mailto:Spencer.Ash@CityofRochester.Gov]
Sent: Wednesday, April 19, 2017 3:27 PM
To: Elliot Shields <eshields@rothandrothlaw.com>
Subject: RE: Barrett v. City of Rochester, et al., 17-CV-6160 (DGL)

[Please explain your assessment of why my motion is only a partial motion to dismiss.](#)

From: Elliot Shields [mailto:eshields@rothandrothlaw.com]
Sent: Wednesday, April 19, 2017 11:33 AM
To: Ash, Spencer L. <Spencer.Ash@CityofRochester.Gov>
Subject: RE: Barrett v. City of Rochester, et al., 17-CV-6160 (DGL)

Mr. Ash,

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I do appreciate your consent to waiver of service on the City and to the extension of time for Plaintiffs' to oppose your Rule 12 motion.

I have decided to oppose your Rule 12 motion on the merits, and forgo the planned Rule 11 motion. I believe that Plaintiffs are on firm grounds to pursue a Rule 11 motion for the reasons outlined in my April 17, 2017 letter; however, I believe that opposing your Rule 12 motion on the merits will allow the parties to begin discovery more quickly, which is in my clients' best interests.

Since my opposition will be largely based on the grounds outlined in my April 17 letter, you've got advanced notice of many of my arguments for your reply.

Further, because your motion is only a partial motion to dismiss, Rule 12 does not stay your time to answer the complaint. Thus, you are required to answer within 20 days from service of the summons and complaint, or by May 8, 2017.

Regards,

Elliot Shields, Esq.
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From: Ash, Spencer L. [<mailto:Spencer.Ash@CityofRochester.Gov>]

Sent: Tuesday, April 18, 2017 9:29 AM

To: Elliot Shields <eshields@rothandrothlaw.com>

Subject: RE: Barrett v. City of Rochester, et al., 17-CV-6160 (DGL)

Thanks for the head's up! I appreciate such effort. However, I have reviewed my papers and will not withdraw my motion. I find it very distasteful that you actually filed your complaint on the federal docket, without the incurring the expense or effort of personal service, in a manner that appears highly suspect having noted your prolix recitation of the law. Moreover, you wrote me and received a courtesy extension to respond to my motion based on your schedule. You also were provided a waiver of personal service on the city. During that correspondence you indicated a willingness to proceed with litigation against the individual defendants. If you failed to properly serve those Defendants, instead opting to threaten me with sanctions, well....that would truly be frivolous and vexatious. The only delay seems to come from the fact that you seem unwilling or unable to perfect process. You profess confusion about my motion because it challenges the sufficiency of your evidence. However, surely you know of the need to present plausible claims with at least a threshold showing of arguably admissible evidence. I have reviewed your complaint and believe you have not. Free to talk! Cheers!

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To: Ash, Spencer L. <Spencer.Ash@CityofRochester.Gov>

Subject: Barrett v. City of Rochester, et al., 17-CV-6160 (DGL)

Dear Mr. Ash,

Please see the attached correspondence regarding the Rule 12 motion filed in the above referenced matter.

Regards,

Elliot Shields, Esq.

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